IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 820 OF 2007

M/s. Rockwell (INDIA), through)
Proprietor Mr. Bharat A. Bhansali,)
having address at Flat No. 12, 3rd floor,)
83 Banganga Road, Saraswat Building,)
Walkeshwar, Mumbai-400 006)...Petitioner

versus

1. The Transport Manager,)
Navi Mumbai Municipal Corporation Transport,)
Turbhe Depot, Navi Mumbai-400 705)

2. The Municipal Commissioner,)
Navi Mumbai Municipal Corporation,)
Belapur Bhavan, Plot No.3, Sector 11, Belapur,)
Navi Mumbai.)

3. M/s. Ronak Advertising, through Proprietor)
Mr. Amardeep Singh, A-208, Vashi Plaza,)
Sector-17, Vashi, Navi Mumbai-400 703)..Respondents

Mr. K.H. Giri for the petitioner.
Mr. Sandesh Deshpande for respondent No.1.
Mr. J.G. Reddy for respondent No.2.

CORAM: **SWATANTER KUMAR, C.J.** &
S.C. DHARMADHIKARI, J.

Judgment reserved on: June 11, 2007
Judgment delivered on: June 21, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

The Transport Manager, Navi Mumbai Municipal Corporation Transport issued a public advertisement in the local newspaper "Lokmat" on 22nd July, 2006. In the advertisement it was stated that the tender forms for construction of 183 bus shelters would be available during the period 24th July, 2006 to 14th August, 2006. The tenders were required to be submitted by 15.00 Hrs. on 16th August, 2006, and they were to be opened in the presence of the parties on the same day at 16.00 Hrs. The petitioner, who claims to be one of the bidders, has averred in the petition that on 16th August, 2006, no officer of respondent No.1 was available at the Office of first respondent for opening the tenders and no further notice was put on the notice board with regard to deferment of date for opening of the tenders. The petitioner, through his advocate, issued a notice to the first respondent on 2nd February, 2007, seeking information about the date on which the tenders would be opened. This letter was replied to by the first respondent on 6th February, 2007. From the reply it became evident that the tenders had been opened on 31st October, 2006, and the tender was awarded to respondent No.3. The petitioner was aggrieved by the said action of the first respondent as, according to the petitioner, the tenders were opened behind the back of the petitioner and

awarding of tender to respondent No.3 was in a most arbitrary and discriminatory manner.

2. An affidavit-in-reply has been filed by the first respondent wherein it was stated that in accordance with condition No. 9.1 of the terms and conditions of the tender, the date of opening of tender would be displayed on the notice board and accordingly a notice was published on the notice board of the main gate on 26th October, 2006. However, the said date was deferred and all the tenderers were informed telephonically that the tenders would be opened on 31st October, 2006. The tenders were actually opened on that day and the tender was awarded to the highest bidder i.e. respondent No.3. A comparative chart of the highest bidder has been placed on record and it is stated that out of the awarded work, respondent No.3 has already completed major part of the work and as such the writ petition is liable to be dismissed.

3. The petitioner is a proprietary concern and is carrying on the business of advertising. The tender was floated by respondent No.1 for construction of 183 bus shelters as per the specification and drawing provided by the first respondent. The dates as aforenoticed are not in

dispute. The tenders were to be opened on 16th August, 2006, but the same were not opened and, according to the first respondent, due intimation was given by publishing a notice on the notice board that the tenders would be opened on 26th October, 2006. These tenders were then opened on 31st October, 2006, after telephonically informing all the persons. The official respondents as well as the private respondent have admitted that out of the five tenderers, three tenderers were present. It is also not in dispute that out of the total 183 bus shelters for which the tender was invited, 100 bus shelters have already been completed by the private respondent. Specific objection has been taken against the maintainability of the petition on the ground that the petition suffers from the plea of delay and laches as the petitioner made no effort right from 16th August, 2006 to 2nd February, 2007, to find out the fate of his tender and in fact the petitioner took no legal steps to claim any relief of his grievance, if any. The tender was awarded to respondent No.3. Condition No.9.1 of the terms and conditions of the tender reads as under:-

> "9.1 If possible the tenders received will be opened on 16.08.2006 at 16.00 hrs. at the office of Transport Manager in the presence of desirous bidder or in the presence of their representative. Otherwise date of tender opening will be displayed on notice board."

4. A bare reading of the above condition shows that the said condition itself had an element of relaxation and tenders could be opened on any subsequent date by placing the information in that behalf on the Notice Board which, according to the respondents, was duly done. We have no reason to disbelieve the affidavit filed by the first and third respondents and, in fact, no documents have been placed on record to persuade the Court to take any contrary view. The conduct of the petitioner is such that it would disentitle the petitioner from claiming any relief in the present writ petition on equitable grounds. No explanation whatsoever has been given in the entire petition as to why the petitioner did not take any proper steps from 16th August, 2006 to 2nd February, 2007, and the present writ petition was lodged in this Court on 7th April, 2007. This inordinate and unexplained delay, in the facts and circumstances of the case, would render the petition liable for dismissal. It was for the petitioner to establish by cogent pleadings and supporting documents that the action of the respondents was arbitrary or was suffering from the vice of colourable exercise of power. No averments in the writ petition have been made, much less supported by any documents, which could form reasonable basis for arriving at the conclusion that the action of the respondents was arbitrary. We find no merit in this writ petition. The same is dismissed while leaving the

parties to bear their own costs.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.